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April 29, 2024

VIA ECF

The Honorable Denise L. Cote
United States District Court Judge
Southern District of New York
500 Pearl Street, Room 1910
New York, New York 10007

Granted.
April 30, 2024
Denise C.

In Re: Acetaminophen ASD/ADHD Prods. Liab. Litig., 1:22-md-3043 (DLC)
Defendants' Letter Motion to File Under Seal

Dear Judge Cote,

Defendants respectfully submit this letter brief to request permission to file, at least temporarily, their forthcoming memorandum of law in support of their Rule 702 motion to exclude the opinions of Roberta Ness, M.D., MPH, and several exhibits in support thereof, partially under seal with redactions, or wholly under seal where appropriate, pursuant to the Stipulated Protective Order (DE 351) (the "Protective Order"), Rule 8-B of the Court's Individual Practices, and the Parties' agreement. Specifically, Defendants seek to redact portions of their memorandum and Dr. Ness's deposition transcript which directly quote from or describe the contents of documents designated by Plaintiffs as confidential, and file under seal a number of the designated-confidential documents themselves.¹

(1) Dr. Ness's Deposition Transcript

Pursuant to the Parties' agreement and the Stipulated Protective Order, Defendants seek to, at least temporarily, file Dr. Ness's deposition transcript (Exhibit 2 to their forthcoming memorandum) with redactions as the 30-day deadline for Plaintiffs to complete their review of the transcript for confidential designations does not expire until May 10. (DE 351 at ¶ 10). Per agreement of the Parties, the redactions applied to the deposition transcript include those sections which quote, describe, or refer to documents designated by Plaintiffs as confidential, such as those identified below. Plaintiffs' counsel has advised that they will provide the Court with a final transcript on the docket as necessary if their confidentiality designations change.

(2) Documents Produced by Plaintiffs as Confidential

Pursuant to the Stipulated Protective Order, Defendants also seek to file wholly under seal Exhibits 5 and 10-12 to their forthcoming memorandum. These documents, which were produced by Plaintiffs and designated as confidential in connection with Dr. Ness's deposition, include email correspondence between Dr. Ness and third parties (Exhibit 5) and several pages of Dr. Ness's handwritten notes reflecting the scientific analysis Dr. Ness performed before she was hired to write her expert report (Exhibits 10-12). Defendants believe that the only necessary redactions pertain to the email usernames, phone numbers, and addresses in Exhibit 5 to preserve the privacy

¹ Defendants also intend to file Exhibits 4 (Baccarelli Am. Rep.), 7 (Pearson Am. Rep.), and 8 (Cabrera Am. Rep.) in support of their forthcoming motion to exclude with redactions. Such redactions shall be applied in the same manner and for the same reasons previously approved by the Court. DE 1217.

of certain individuals. *See Kewazinga Corp. v. Microsoft Corp.*, No. 1:18-CV-4500-GHW, 2021 WL 1222122, at *5 (S.D.N.Y. Mar. 31, 2021) (redacting “personal information of non-parties” due to “significant privacy interests” and “the lack of relevance of this information to any issue in th[e] litigation”). Defendants nonetheless respectfully request permission to file such documents under seal so that Plaintiffs have an opportunity to consider and support their confidentiality designations and so that the Court may make its confidentiality determination, as may be necessary or appropriate. Defendants have highlighted in green in Exhibit 5, filed concurrently under seal herewith, such proposed redactions.

(3) Defendants’ Memorandum of Law

Lastly, and pursuant to the Stipulated Protective Order, Defendants respectfully request permission to file with redactions their memorandum of law, such that sections quoting from or describing the redacted portions of Exhibit 2 as well as any portion of sealed Exhibits 5 and 10-12 receive the same treatment as indicated above.

Pursuant to the Protective Order and Rule 8-B of the Court’s Individual Practices, Defendants will contemporaneously file the proposed sealed portions of the documents with redactions in the ECF system and electronically relate those documents to this letter motion.

Respectfully submitted,

/s/ Kristen L. Richer